DON S. ORLANDO ET AL.

IBLA 80-870 Decided May 4, 1982

Appeal from decision of the Oregon and Nevada State Offices, Bureau of Land Management, denying the protest of the designation of two wilderness study areas, OR 2-81L and OR 2-82H. 8500 (913).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

   In order to enter the study phase of the wilderness review process, an inventory unit need not be free of all intrusions or imprints of man. Section 2(c) of the Wilderness Act of Sept. 3, 1964, 16 U.S.C. § 1131(c) (1976), requires only that an area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable.

2. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act -- Words and Phrases

   "Roadless." H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), provides a definition of "roadless" adopted by the Bureau of Land Management in its Wilderness Inventory Handbook. The word "roadless" refers to the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use. A way maintained solely by the passage of vehicles does not constitute a road.

3. Federal Land Policy and Management Act of 1976: Wilderness -- Wilderness Act

> In evaluating a unit's opportunities for solitude, BLM is directed by the Wilderness Inventory Handbook to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of other people in the inventory unit. Factors or elements influencing solitude may include size, natural screening, and the ability of the user to find a secluded spot.

APPEARANCES: Wendell Gronso, Esq., Burns, Oregon, for appellants; Zach C. Miller, Esq., Dale D. Goble, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Don S. Orlando and 38 residents of the Fields, Oregon, area appeal from a decision of the Oregon and Nevada State Directors, Bureau of Land Management (BLM), dated July 16, 1980, denying their protest of the designation of units 2-81L and 2-82H as wilderness study areas (WSA's). The units on appeal are but two of 30 selected inventory units in southeastern Oregon which were intensively inventoried by BLM. The results of this inventory were announced by the Oregon Acting State Director in a notice published on March 27, 1980, in the Federal Register, 45 FR 20166. Unit 2-81L (Pueblo Mountains) occupies some 67,430 acres in Harney County, Oregon, and 600 acres in Humboldt County, Nevada; 1/ unit 2-82H (Rincon) occupies approximately 97,395 acres in Harney County.

BLM's action designating these lands as wilderness study areas was taken pursuant to section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976). That section directs the Secretary to review those roadless areas of 5,000 acres or more and roadless islands of the public lands which were identified during the inventory required by section 201(a) of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Following review of an area or island, the Secretary shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness.

1/ This interstate unit has been formed by joining two contiguous subunits of the public lands. A subunit of Nevada inventory unit NV-020-642 contains only 600 acres, an area insufficient by itself to receive a WSA designation. Since it is contiguous, however, with public lands of sufficient acreage to satisfy the size requirements of section 603 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1782 (1976), this subunit may enter the study phase as part of Oregon unit 2-81L. See Marvin Casey, et al., 63 IBLA 208, 209 n.1 (1982).

The wilderness characteristics referred to in section 603(a) are defined in section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976).

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

The review process undertaken by the State Offices pursuant to section 603(a) has been divided into three phases by BLM: Inventory, study, and reporting. BLM's announcement of WSA designations, published on March 27, 1980, marks the end of the inventory phase of the review process and the beginning of the study phase.

Appellants' statement of reasons on appeal is substantially similar to that submitted by them in the appeal of Marvin Casey, et al., supra. To the extent that their arguments therein were of a legal nature and have been repeated in the instant appeal, our response is unchanged. Counsel for appellants refers to manmade waterholes and fences in the WSA's on appeal and contends that roads are also evident. Such intrusions, counsel argues, are inconsistent with a primitive wilderness area. Because of the desert conditions existing in these units, appellants contend that the roads do not need gravel, grading, or culverts. These roads are said to provide access to state and private lands, and serve as salt roads and cattle gathering roads. In appellants' view, opportunities for solitude and recreation are lacking because of the dry, hot climate. "The only wildlife," counsel writes, "is an occasional rabbit, crow, or magpie looking for the remains of a rabbit who has died of thirst" (Statement of reasons at 2).

[1] In the protest response, BLM acknowledged that the WSA's at issue do contain manmade range developments, but disagreed with appellants' conclusion that these developments deprive the areas of naturalness characteristics. We agree. Section 2(c) of the Wilderness Act, quoted above as 16 U.S.C. § 1131(c) (1976), requires that a wilderness area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable. The underscored language, taken verbatim from section 2(c), is ample support for the proposition that a WSA need not be free of all intrusions.

H.R. Rep. No. 540, 95th Cong., 1st Sess. 6-7 (1977), provides some guidance for understanding the concept of naturalness. This report, prepared to accompany H.R. 3454, a bill later enacted as the Endangered American Wilderness Act, 16 U.S.C. § 1132 (Supp. II 1978), contains examples of impacts on naturalness that may be allowed in certain cases in a wilderness area. Among these are: Trails, trail signs, bridges, fire towers, fire breaks, fire suppression facilities, pit toilets, fisheries enhancement facilities, fire rings, hitching posts, snow gauges, water quantity and quality measuring devices, and other scientific devices. Based on this guidance, BLM published a list of intrusions on the public lands that, it found, could be allowed in a wilderness area. These include research monitoring markers and devices, air quality monitoring devices, fencing, and spring development. Wilderness Inventory Handbook at 12-13, Sept. 27, 1978.

The Congressional purpose that a wilderness area generally appear to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable, illustrates the highly subjective judgment which BLM must make in determining whether an area possesses the quality of naturalness. This judgment is entrusted to Bureau personnel whose reports evidence firsthand knowledge of the land. Assisting BLM are comments from numerous groups and individuals whose interests span a broad spectrum. BLM's judgment in such matters is entitled to considerable deference. Such deference will not be overcome by an appellant expressing simple disagreement with subjective conclusions of BLM. This is not to suggest that we abdicate our review of subjective wilderness judgments. We suggest, however, that an appellant seeking to substitute its subjective judgments for those of BLM has a particularly heavy burden to overcome the deference we accord to BLM in such matters. C & K Petroleum Co., 59 IBLA 301 (1981); National Outdoor Coalition, 59 IBLA 291 (1981); Richard J. Leaumont, 54 IBLA 242, 88 I.D. 490 (1981). Appellants' submissions on appeal do not rise to this level.

[2] Appellants' contention that the WSA's at issue contain roads amounts to little more than the allegation that "the roads speak for themselves in that they are well-travelled." Tempting as this solution may be, the definition of a road has been set out with care by Congress and involves other concepts besides use. In H.R. Rep. No. 94-1163, 94th Cong., 2d Sess. 17 (1976), the word "roadless" is defined to mean "the absence of roads which have been improved and maintained by mechanical means to insure relatively regular and continuous use." A way maintained solely by the passage of vehicles does not constitute a road. Appellants do not allege the mechanical improvement and maintenance of any particular route within the WSA's at issue. In the absence of such allegations, the State Directors' response is affirmed.

In appellants' third argument on appeal, they maintain that the severity of climate and lack of natural sources of water preclude outstanding opportunities for solitude or a primitive and unconfined type of recreation. BLM's narrative describing units 2-81L and 2-82H speaks of outstanding opportunities for hiking, backpacking, and sightseeing, inter alia. The narrative finds outstanding opportunities for solitude to exist in each unit because of the topographic diversity there and the units' large size. Vegetative screening is also found in unit 2-82H in the area around Juniper Springs.

[3] Whether a unit possesses outstanding opportunities for solitude requires a highly subjective determination by BLM. In an effort to guide this determination, the Wilderness Inventory Handbook was published by the Department in September 1978. Therein, at page 13, BLM is instructed to consider factors which influence solitude only as they affect a person's opportunity to avoid the sights, sounds, and evidence of the other people in the inventory unit. Size, natural screening, and the ability of the user to find a secluded spot are set forth as factors influencing solitude.

While extremes of temperature may affect the number of users to an area, a unit's opportunities for solitude would generally exist independent of temperature extremes. Similarly, opportunities for solitude may exist in the absence of sufficient moisture to promote vegetative screening if topographic screening is present in the unit. Appellants' arguments with respect to the units' opportunities for solitude do not persuade us that BLM has erred in its determination.

A finding of outstanding opportunities for either solitude or a primitive and unconfined type of recreation is sufficient to permit an inventory unit to enter the study phase, assuming size and naturalness requirements have been met. Churchill County Board of Commissioners, 61 IBLA 370 (1982). Having affirmed BLM's finding that outstanding opportunities for solitude exist in the WSA's, we find no need to discuss appellants' contentions as to recreation. We note in passing, however, that appellants' arguments on the subject amount to little more than simple disagreement with BLM's subjective findings. No specific errors are discussed. More than simple disagreement is required to reverse BLM's decision or place a factual matter at issue. Sierra Club, 53 IBLA 159 (1981). A decision of the State Director will not be disturbed on appeal where appellant fails to meet its burden of pointing out specific errors of law or fact in the decision below. Sierra Club, 54 IBLA 37 (1981). Appellants' request for a hearing is denied.

The protest response of July 16, 1980, has ably answered appellants' concerns that its photographs of the units on appeal were not filed with its written comments. Similarly well answered is appellants' contention that BLM's decision was influenced by a volume of pro-wilderness comments from persons who, counsel claims, have never been on the actual site. The State Directors' response to these issues and others, as set forth in the July 16, 1980, protest response, is affirmed.

We read with concern, however, appellants' charge that BLM is unfamiliar with the lands on appeal, based on its alleged inability to recognize certain areas depicted in appellants' photographs. If this charge were substantiated, we would have no hesitation to remand this case for further inventory. BLM acknowledges in its protest response that its district staff found it difficult to evaluate information in several of appellants' photograph captions because the locations of the photographs were only identified as to township and range and the directions of the photographs were not identified in several instances. Subsequently, BLM field-checked the areas in dispute and reaffirmed its contention that some of appellants' photograph captions were in error. Though BLM and appellants remain at loggerheads as

to the location of the areas depicted in some photographs, the photographs at issue are largely panoramas of the general terrain. The photographs themselves provide no evidence that the WSA designation of the units on appeal should be changed or that WSA boundaries should be altered. Based on the submissions of BLM and appellants to this Board, we find no basis for disturbing BLM's protest response of July 16, 1980.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Oregon and Nevada State Directors is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge